APPEAL NO. 023046
FILED JANUARY 16, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on November 4, 2002. The hearing officer determined that the respondent (carrier herein) is relieved of liability for the appellant's (claimant herein) injury because the claimant was in a state of intoxication at the time he was injured. The hearing officer also found that the carrier did not waive its right to contest the compensability of the injury and that the claimant did not have disability because the carrier was relieved of liability. The claimant challenges these determinations and requests that we reverse them. The carrier responds that the decision of the hearing officer should be affirmed.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

While the claimant challenges all of the hearing officer's determinations, the thrust of the claimant's appeal is that the hearing officer erred in not finding carrier waiver. Section 409.021 requires that a carrier pay or dispute a claim within seven days of receiving written notice of the claim or it waives its right to dispute the compensability of the claim. *See* Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002).

In the present case, the carrier filed Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) which was stamped "acknowledged" by the Texas Workers' Compensation Commission on May 21, 2002. On the face of this TWCC-21 it states that the carrier received written notice of the claimant's injury on May 13, 2002. However, the carrier put into evidence a sworn affidavit from the handling adjuster on the claim which states that the first time the carrier received written notice of the claim was May 15, 2002, and that the May 13, 2002, date on the TWCC-21 was actually the date the employer, not the carrier, was first notified of the injury. The hearing officer found that the carrier first received written notice of the injury on May 15, 2002, and disputed the injury on May 21, 2002. The hearing officer concluded that the carrier timely disputed compensability in accordance with Section 409.021.

The claimant argues that the hearing officer's finding that the carrier first received written notice of the claimant's injury on May 15, 2002, rather than May 13, 2002, was not supported by competent evidence, but was merely raised by the carrier's attorney in argument. Clearly, the sworn affidavit from the handling adjuster is evidence from upon which the hearing officer could find that the carrier received first written notice of the injury on May 15, 2002.

Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard to the present case, we find sufficient evidence to support the hearing officer's determination that the carrier did not waive its right to contest compensability.

We also find sufficient evidence to support the hearing officer's finding that, at the time of the injury, the claimant did not have the normal use of his mental or physical faculties due to the voluntary introduction of a controlled substance into his body. This factual finding was sufficient to support the hearing officer's conclusion that the carrier was relieved of liability and had no disability.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **FAIRFIELD INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

DENISE BLOCKBOURN
12225 GREENVILLE AVENUE
DALLAS, TEXAS 75234.

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Gary L. Kilgore
Appeals Judge

CONCUR:

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Elaine M. Chaney
Appeals Judge

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Terri Kay Oliver
Appeals Judge